

Minister Ralph Goodale
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RE: Calls for changes to Immigration detention policy and practice

July 26, 2016

Dear Minister Ralph Goodale,
CC Matt Decourcey, M.P.

No One is Illegal Fredericton is joining the chorus of voices across the country who have rallied behind the heroic hunger strike of over 60 immigration detainees in Ontario.

We are calling on the government to end the inhumane practice of immigration detention in Canada. The detention policy has resulted in deprivations of liberty for minor regulatory offences (an offence equivalent to speeding); deaths of detainees; indefinite detention; and placement of immigration detainees in maximum security provincial prisons with those who have been convicted of serious crimes. This policy is inconsistent with Liberal government's promise to create a more humane immigration regime in Canada.

We call for the following minimum changes:

- an absolute time limit of 90 days for detention
- accessible *habeus corpus* rights to all immigration detainees in Canada
- no more housing immigration detainees in maximum security prisons
- no more housing of immigration detainees in the same facilities as those who have been convicted of serious crimes; and
- adequate access to health and mental health care, and access to social programs.

The hunger strikes

On July 11, 2016, over 60 men of colour in two immigration detention centres in Ontario began refusing food. They are being detained in the maximum security Central East Correctional Centre and the Toronto East Detention Centre without trial or criminal charges. They are demanding a meeting with you, Minister Goodale, to end their indefinite incarceration, and they are speaking out against worsening prison conditions, including no access to recreational or other programs and the overcrowded conditions in provincial jails. End Immigration Detention Network Organizer, Sharmeen Khan recently noted that, "They ... spend 18 to 21 hours in their cell ... When they are released from that cell they are not actually allowed outside ... they are only brought to a bigger cell where they can exercise or walk around."¹

The present action by immigration detainees is not new. There have been numerous hunger strikes by immigration detainees over recent months and years. In April 2016, detainees in the Central East Correctional Centre protested over recent deaths in immigration detention, their

detention in maximum security and poor prison conditions. In September 2013 detainees at the same facility initiated a hunger strike, again over the same issues. Time and again, detainees have demanded basic humanity. Each time they have been denied.

Deprivations of liberty for reasons no Canadian citizen has to worry about

Over the Harper years, Canada detained over 80,000 people in immigration detention, including children. Many more have continued to be detained since then, and nothing has changed in the practice of immigration detention in Canada since the new government came to power.

Immigration detention is allowed if there are reasonable grounds for an immigration officer to believe that a foreign national or permanent resident:

- is a danger to the public;
- is unlikely to appear for a future interview, an admissibility hearing, a removal, or a proceeding that could lead to a removal order;
- is under a deportation order, but the country of origin is not issuing travel documents or the country is deemed unsafe, so they are just held;
- or, if an officer is not satisfied with the identity or travel authorization of the individual.

There are numerous problems with these grounds. Firstly, someone may be deprived of their liberty simply on the subjective belief by an officer that the person will not show up to a hearing or interview, even without the person having missed a hearing or interview. Secondly, someone may be deprived of their liberty because their identity documents are not believed, which may have more to do with standards in the country of origin rather than anything the person did. Even if the documents are not valid, little regard is given to the desperate situation refugees often find themselves in, which may persuade very ordinary people to cobble together what identification materials and travel plans they can to enable them to leave their countries of origin. Thirdly, even in cases where the stated ground for detention is public safety, an individual's liberty may be deprived because there is only a reasonable belief by an immigration officer that the person is a public safety risk. Conversely, in cases of Canadian citizens facing criminal charges, continued detention through denial of bail is reserved only for exceptional circumstances – not as a default. Finally, the standard for continued detention under criminal law is a balance of probabilities, not the lower standard of “reasonable belief” applied to immigration detainees.

Imprisonment is the most severe form of punishment available under Canadian law, designed for the most serious criminal offences. Immigration detainees are being denied liberty simply for who they are and where they are from. Fundamentally, this is racial discrimination.

Deaths in Immigration Detention

Fourteen people have died in immigration detention in Canada since the year 2000. They include:

- March 13, 2016 – 39-year-old Chilean-born Javier Romero Astorga, who died while in detention for undisclosed reasons. The family is still seeking answers.²

- March 9, 2016 - 64-year-old Burundian refugee, Melkioro Gahungu, who committed suicide while in immigration detention, where he had been jailed without charges or trial for at least a year.³
- June 11, 2015 – 39-year-old Somali born Abdurahman Ibrahim Hassan, who was reportedly ‘restrained by guards’ and died in a Peterborough hospital while under immigration detention.⁴
- December 20, 2013 - 42-year-old Mexican national, Lucia Vega Jimenez, who hung herself in a shower at an immigration detention centre at the Vancouver International Airport while awaiting a deportation to Mexico, dying days later in hospital.⁵

Deaths in immigration detention are the direct result of an ongoing intolerable situation. The endlessness of detentions, the miserable prison conditions, and the looming threat of deportation back to the trauma detainees once fled, all lead to fatal consequences. Adding to the injustice, when there are deaths, officials have avoided responsibility. Recently, in the case of Abdurahman Ibrahim Hassan, police who were on hand when Mr. Hassan died were cleared of wrongdoing for his death by the Special Investigations Unit. Tings Chak of the End Immigration Detention Network commented, “The fact is if Abdurahman hadn’t been in detention, he would be alive today ... We can’t bring Abdurahman back, but Mr. (Public Security Minister Ralph) Goodale can step in and stop future deaths by ending immigration detentions now.”⁶

Indefinite detention

When someone is kept in immigration detention they are not given a sentence. There is no timeline on how long they are expected to stay, unlike those with criminal convictions, who are sentenced to serve a specified amount of time, if at all. The system is inherently indefinite for immigration detainees. Officials with Immigration Canada have previously claimed that Canada does not practice indefinite immigration detention because there are ongoing detention reviews: after the first 48 hours, after the first 7 days, then every 30 days afterwards. However, once someone has had a detention review, each subsequent review will give deference to the decision of the previous decision-maker, unless some substantial, new information has come forward. The more you are denied, the harder it will be to be released.

The examples of duration for immigration detention are staggering. One man, who was called by the name Victor Vinnetu, and has stated he is from South Africa, was held for 11 years because his identity could not be verified.⁷ He was never charged with a crime. He was finally released from detention this year. Another man, Michael Mvogo was held for nearly 10 years after he was convicted of drug possession and officials could not verify his identity or country of origin. He was finally released in 2015.⁸ There are countless examples of others held for several months to years for irregularities that cause harm to no one.

Canada’s record of immigration detention has been condemned on an international level. On June 15, 2015, the UN Human Rights Committee expressly noted that Canada’s immigration detention practices result in indefinite detention, and that this was out of keeping with the human rights standards that Canada is expected to uphold as a signatory to the International Covenant on Civil and Political Rights.⁹

In October 2015, the Ontario Court of Appeal ruled that the system of immigration detention does not allow detainees to effectively challenge their detentions.¹⁰ After the decision - effective immediately - detainees in Ontario were entitled to apply to the Ontario Superior Court of Justice for *habeas corpus* to dispute their continued detentions. The highest court in Ontario acted. What is the government's response?

Miserable prison conditions

Immigration detainees have committed to yet another hunger strike to assert their humanity and to draw attention to the terrible conditions they face daily, including triple bunking, denial of adequate health and mental health care, and being housed in the same facility as serious criminal offenders.

In April 2016, Head of the Ontario Human Rights Commission, Renu Mandhane, wrote an open letter to Ontario's community safety minister, Yasir Naqvi. She noted that,

“There is a fundamental, systemic problem with using provincial correctional facilities designed for persons detained under the Criminal Code to detain immigrants who are neither criminally charged nor serving a sentence ... Provincial correctional facilities have neither the infrastructure nor the staff expertise to handle immigration detainees in a way that accommodates their unique needs.”¹¹

In May 2016, over 250 doctors, nurses, social workers and lawyers in Ontario stated that,

“Refugee claimants and other migrants are especially vulnerable to the toxic stress of incarceration, as many have already experienced prolonged and repeated trauma, including torture, in their countries of origin.”¹²

As those currently involved in the hunger strike are affirming, their humanity is being denied. There is little to no appreciation of their experiences and persistent denial of their needs.

Canadian immigration detention is out of sync with government's promises

The government has promised to transform the immigration system to one that upholds higher humanitarian standards. Immigration Minister John McCallum has been quoted on the government's plans for immigration policy, stating that the new policy,

" ... outlines a significant shift in immigration policy towards reuniting more families, building our economy and upholding Canada's humanitarian traditions to resettle refugees and offer protection to those in need." ¹³

When recently called upon to meet with the detainees, your receptionist, Minister Goodale, refused to schedule a meeting and maintained that the Minister could not speak to members of the public regarding the matter.¹⁴ It is troubling that there has been resistance to meeting with the detainees. Moving Canada's immigration policy towards “upholding Canada's humanitarian traditions” must include hearing directly from those affected by immigration policy.

For the reasons given, the practice of immigration detention in Canada does not align with the government's future view of Canada's immigration system, nor with the International Covenant on Civil and Political Rights. Additionally, Canada compares unfavourably with other countries in its policy and practice of immigration detention.¹⁵

No One is Illegal Fredericton is aware that there is an upcoming review of Canada's immigration system. We insist that the changes to Canada's immigration detention practices as petitioned by the hunger strikers and their allies, and stipulated by international law, be included in this review. They will be a long time in coming.

No One is Illegal Fredericton

¹ http://www.vice.com/en_ca/read/immigration-detainees-go-on-hunger-strike-to-highlight-canadas-disturbing-detention-policy

² <https://www.thestar.com/news/immigration/2016/03/23/family-utterly-in-the-dark-about-chilean-mans-death-in-detention.html>

³ <https://www.thestar.com/news/immigration/2016/03/10/secretcy-cloaks-death-of-immigration-detainee-in-toronto-jail.html>

⁴ <https://www.thestar.com/news/immigration/2015/06/19/secretcy-surrounds-death-of-troubled-man-in-immigration-detention.html>

⁵ <http://www.vancouversun.com/health/Lucia+Vega+Jimenez+Timeline+tragedy/10253737/story.html>

⁶ <https://www.thestar.com/news/immigration/2016/07/15/police-cleared-in-immigration-detainees-death.html>

⁷ <http://www.theglobeandmail.com/news/world/freed-from-canadian-detention-south-african-man-left-in-limbo/article30462108/>

⁸ <https://www.thestar.com/news/immigration/2015/08/22/canada-border-services-agency-confirms-identity-for-man-with-no-name.html>

⁹ <http://ihrp.law.utoronto.ca/un-human-rights-committees-2015-review-canada>

¹⁰ <http://www.ontariocourts.ca/decisions/2015/2015ONCA0700.htm>

¹¹ <https://www.thestar.com/news/canada/2016/04/12/ontario-human-rights-official-calls-for-change-to-immigration-detention-system.html>

¹² <https://stoptransferstojails.wordpress.com> (concerns were repeated in a letter on July 14, 2016 by 68 doctors)

¹³ <http://www.cbc.ca/news/politics/liberals-immigration-levels-plan-2016-1.3479764>

¹⁴ <http://rabble.ca/news/2016/07/immigration-detainees-on-hunger-strike-demand-meeting-public-safety-minister>

¹⁵ <https://www.globaldetentionproject.org/countries/americas/canada>